

PRACTICES AND PROCEDURES OF JUDGE DONALD E. ZIEGLER

I. GENERAL MATTERS

A. Communications with the Court

Judge Ziegler welcomes correspondence with the Court and encourages letter briefs in lieu of motions practice as to any matters, requiring only that opposing counsel be copied on all correspondence.

B. Communications with Law Clerks

Judge Ziegler permits communications with his law clerks concerning the administration, not the merits, of any case. Counsel is encouraged to inquire of the law clerks as to the status of any pending motions.

C. Telephone Conferences

Judge Ziegler encourages attorneys and parties to participate in conferences by telephone, particularly where counsel or a party is from outside the district or even outside Allegheny County.

D. Pro Hac Vice Admissions

Judge Ziegler handles pro hac vice admissions on an informal basis, having opposing counsel move such admissions on the day of trial.

E. Comment to the Media

Judge Ziegler has no special policy regarding commenting about a pending case by counsel to the media, but requires that counsel comply with the ABA standards in criminal cases.

II. MOTIONS PRACTICE

A. Oral Argument

Judge Ziegler seldom holds oral argument on any pretrial motions.

B. Briefs

Judge Ziegler requires briefs to be filed in support of dispositive motions and other motions dealing with the merits of the case. Judge Ziegler does not require briefs to be filed on motions such as motions for extension of time, motions for continuance of trial, and motions concerning discovery disputes. If a brief has not been filed and Judge Ziegler believes that it would be helpful to have one, he will ask counsel to submit one. Judge Ziegler encourages letter briefs. He has a page restriction of 15 pages on formal briefs. Judge Ziegler does not require reply and surreply briefs, but will permit them. Within 30 days of the receipt of all briefs, the law clerks submit a memorandum to Judge Ziegler.

C. **Chambers Copies of Motion Papers**

Judge Ziegler does not require, and prefers that counsel does not send, a courtesy copy of motions papers to his chambers.

D. **Scheduling**

Judge Ziegler's general practice is to provide 30 days (60 days for the government) within which a party must file its response to a motion. Judge Ziegler is flexible as to the timing of the filing of the brief in support of the motion; that is to say, counsel may file the motion first, and then file the brief within a few days thereafter.

E. **Magistrate Judge's Report and Recommendation**

Other than those cases that are automatically assigned to magistrate judges through the Clerk's Office, Judge Ziegler does not assign any of his cases directly to magistrate judges. Judge Ziegler's practice with regard to Reports and Recommendations to which objections have been filed is to require a response from the non-objecting party. Judge Ziegler generally suggests that such a response be in the form of a letter brief; however, formal responsive briefs not in excess of five pages are permitted. Where no objections have been filed to the Report and Recommendation, Judge Ziegler reviews the original briefs and the R&R, and only rarely asks for additional briefs.

F. **Evidentiary Hearings**

With regard to pretrial motions that require an evidentiary hearing (e.g., suppression hearings, hearings regarding expert witness issues), Judge Ziegler schedules that hearing for the day of trial and not before.

G. **In Limine Motions**

While the presentation of in limine motions can occur at any time prior to and during trial, Judge Ziegler will generally rule on such motions at the time of trial.

III. **CIVIL CASES**

A. **Pretrial Procedures**

1. **Local Rule 16**

Judge Ziegler uses a standard form Local Rule 16 pretrial order, a copy of which is attached hereto. His standard pretrial order tracks the language of the local rule and does not contain any additional items.

2. **Pretrial Conferences**

Judge Ziegler schedules an initial status conference within 30 days of the filing of all answers. Following the initial conference, Judge Ziegler issues his order with a date certain for pretrial conference. Judge Ziegler conducts additional case management conferences whenever an opportunity arises to get counsel together, for example, when there is a discovery dispute or when requested to do so by counsel.

3. **Settlement**

For purposes of settlement discussions, Judge Ziegler requires that counsel have explored their settlement authority with the client, and while the client need not be present for settlement discussions, the client must be available by phone. In non-jury cases, Judge Ziegler often handles settlement negotiations and has sometimes referred them to another judge. Judge Ziegler always explores ADR possibilities. Judge Ziegler believes that ADR is the judge's responsibility in the first instance. Therefore, Judge Ziegler will suggest, and even recommend, ADR mechanisms such as mediation and mini-trials.

4. **Extensions and Continuances**

Judge Ziegler routinely grants any requests for extensions and continuances.

B. **Discovery Matters**

1. **Length of Discovery Period and Extensions**

Judge Ziegler generally permits 120 days for discovery, unless otherwise requested by the parties. Judge Ziegler will permit extensions of the discovery period if it has been demonstrated that the attorneys are "working" on the case.

2. **Expert Witnesses**

Judge Ziegler will permit discovery depositions of expert witnesses upon request, but only after the completion of discovery and with the understanding that it is reciprocal.

3. **Deposition Disputes**

Judge Ziegler will entertain telephone calls from attorneys at a deposition to resolve a discovery dispute.

4. **Stay of Discovery**

In cases pending before Judge Ziegler, the filing of a dispositive motion will stay discovery, if appropriate.

5. **Limitations on Discovery**

Judge Ziegler does not impose any restrictions on the number of interrogatories or depositions or on the use of any other discovery procedures.

6. **Rule 11 Motions - Rule 37 Sanctions**

Judge Ziegler defers ruling on Rule 11 motions and motions for sanctions under Rule 37 until the end of the case. Judge Ziegler requires briefs on such motions. Judge Ziegler has awarded attorney fees in some cases (rare). On occasion, Judge Ziegler has required counsel to attend conferences or seminars in lieu of awarding counsel fees.

C. **Injunctions and TROs**

Judge Ziegler promptly schedules TRO and injunctive hearings. Judge Ziegler will not grant an ex parte request to expedite discovery in injunctive cases. However, Judge Ziegler may grant a request for expedited discovery after conference with all parties.

D. **Trial Procedures**

1. **Scheduling of Cases**

At the pretrial conference, Judge Ziegler will set a date certain for trial. Judge Ziegler generally has two or three cases that can be tried as a backup should the first case settle. However, counsel in backup cases will be provided two weeks' notice prior to being called for trial. Judge Ziegler always accommodates counsel's vacations and conflicts.

2. **Trial Hours/Days**

Judge Ziegler sets aside Fridays for evidentiary hearings, motions, injunctions, and the like. Judge Ziegler holds trials Monday through Thursday from 9:30 a.m. to 5:00 p.m.

3. **Trial Briefs**

Trial briefs are optional in Judge Ziegler's courtroom. There are no page or filing date restrictions. Judge Ziegler strongly encourages that findings of facts and conclusions of law be submitted before the case begins in non-jury cases.

4. **Voir Dire**

Judge Ziegler's courtroom deputy conducts voir dire in civil cases. Judge Ziegler permits counsel to supplement the court's standard voir dire questions as long as the questions are submitted and approved in advance.

5. **Notetaking by Jurors**

Judge Ziegler generally discourages notetaking by jurors. Judge Ziegler has permitted notetaking by jurors in only complex cases.

6. **Side Bars**

Judge Ziegler does not permit side bar conferences.

7. **Examination of Witnesses Out of Sequence**

Judge Ziegler will permit examination of witnesses out of sequence upon request and if appropriate.

8. **Opening Statements and Summations**

With regard to the amount of time allowed for opening statements and summations, Judge Ziegler's philosophy is that "no souls are saved after ten

minutes.” However, Judge Ziegler will generally permit up to one hour for each side’s opening statement/summation.

9. **Examination of Witnesses or Argument by More Than One Attorney**
Judge Ziegler does not permit counsel to split up the examination of a witness or to split up opening or closing arguments.
10. **Examination of Witnesses Beyond Direct and Cross**
Judge Ziegler strongly discourages examination of witnesses beyond direct and cross.
11. **Videotaped Testimony**
Judge Ziegler has no special procedures or requirements outside those contained in the local rules with regard to the use and admission of videotaped testimony.
12. **Reading of Material into the Record**
Judge Ziegler’s only requirement with regard to the reading into the record of deposition testimony, stipulations, pleadings, or discovery material is that the other side has notice of same.
13. **Exhibits**
Judge Ziegler requires that all exhibits be marked and exchanged in advance, and that objections thereto be filed in advance. The same is true for exhibits and demonstrative evidence. Subject to approval by the court, visual aids may be used during opening statements.
14. **Directed Verdict Motions**
Judge Ziegler’s only requirement as to directed verdict motions or motions to dismiss in non-jury trials is that the motions be timely.
15. **Jury Instructions and Verdict Forms**
Judge Ziegler utilizes Devitt and Blackmar for standard jury instructions. The judge does not require, but does permit, the submission of proposed jury instructions and verdict forms. The judge requires these to be submitted as early as possible and certainly before closing arguments. Judge Ziegler’s practice is to hold a charging conference in chambers, at which time he reads the proposed charge to the attorneys and rules on any objections on the record. Judge Ziegler generally drafts the first form of the verdict slip, but is always open to suggestions from counsel.
16. **Proposed Findings of Fact and Conclusions of Law**
Judge Ziegler does not require, but encourages, the submission of proposed

findings of fact and conclusions of law prior to trial.

17. **Offers of Proof**

Judge Ziegler requires the parties to caucus on the matter before bringing it up during the course of trial.

18. **General Courtroom Rules**

Judge Ziegler has no special rules regarding the conduct of attorneys during trial.

E. **Jury Deliberations**

1. **Written Jury Instructions**

Judge Ziegler will, on occasion, give the jury a copy of the instructions, depending on the complexity of legal principles involved.

2. **Exhibits in the Jury Room**

Judge Ziegler will generally permit exhibits to accompany the jury for their deliberations unless some danger is posed to the jury, such as with narcotics, weapons, etc. If exhibits are too large to be taken into the jury room, Judge Ziegler permits the jurors to come to the courtroom to view the exhibits, if necessary.

3. **Jury Requests to Read Back Testimony or Replay Tapes During Deliberations**

As a general rule, Judge Ziegler does not permit the rereading of trial testimony or the replaying of videotaped testimony unless the jury's request focuses on a particular item. Counsel for the parties must be present in the courtroom for any rereading or replaying.

4. **Jury Questions**

Where the jury has questions or requests during trial or deliberations, Judge Ziegler summons counsel to the courtroom and reviews the questions or requests with counsel first before determining how to proceed.

5. **Availability of Counsel During Jury Deliberations**

Judge Ziegler does not require trial counsel to remain in the courtroom during jury deliberations; however, counsel must be available by phone.

6. **Interviewing the Jury**

Judge Ziegler strongly discourages interviewing jurors post verdict.

F. **General**

1. **Special Types of Cases**

With regard to social security cases, Judge Ziegler issues the standard briefing order for motions for summary judgment. Judge Ziegler generally decides social security cases within 60 days of the filing of all briefs.

With regard to RICO cases, it is Judge Ziegler's practice to send out the case statement form to plaintiff's attorney.

With regard to class actions, Judge Ziegler follows the local rules for same.

IV. **CRIMINAL CASES**

A. **Motions**

Judge Ziegler will routinely grant motions for an extension of time to file pretrial motions, whether or not there is significant discovery material to be reviewed. However, the granting of these requests for extensions does not alter the trial date. With regard to proposed orders accompanying motions for extension of time, Judge Ziegler does not require any specific language with respect to the Speedy Trial Act inasmuch as he generally provides standard language in the final order.

B. **Pretrial Conferences**

In criminal cases, Judge Ziegler schedules a status conference within 30 days of arraignment. Judge Ziegler schedules a firm trial date at the conference.

C. **Guilty Pleas**

Judge Ziegler does not have any special rules concerning guilty pleas, and he imposes no deadlines for accepting or rejecting plea bargains. Judge Ziegler follows a written format to insure all items are covered in the guilty plea colloquy, which format is available for counsel's review.

D. **Voir Dire**

Judge Ziegler conducts the voir dire in criminal cases. He does not permit counsel to conduct any portion of the voir dire. Counsel may supplement the standard voir dire questions by submitting them in advance.

E. **Trial**

Judge Ziegler gives wide latitude on cross-examination.

In multi-defendant cases, Judge Ziegler places no restrictions upon counsel regarding the examination of a witness/areas by more than one defense attorney.

Upon request, Judge Ziegler will sequester witnesses except the case agent.

Judge Ziegler permits the use of transcripts in cases where the government introduces tape-recorded conversations.

Judge Ziegler permits defense counsel to determine when to present his or her opening statement.

Judge Ziegler permits the submission of special interrogatories to a jury in a criminal case.

Judge Ziegler prefers that any waivers of defendant's rights be placed upon the record at recess before or after court begins.

Judge Ziegler utilizes Devitt and Blackmar for standard jury instructions. For unique issues, the judge relies on the 5th Circuit's standard jury instructions guide. The judge does not require, but does permit, the submission of proposed jury instructions and verdict forms. The judge requires these to be submitted as early as possible and certainly before closing arguments. Judge Ziegler's practice is to hold a charging conference in chambers, at which time he reads the proposed charge to the attorneys and rules on any objections on the record. Judge Ziegler generally drafts the first form of the verdict slip, but is always open to suggestions from counsel.

F. Sentencing Memoranda

Judge Ziegler requires the submission of a sentencing memorandum subsequent to the plea or verdict and before sentencing.

G. Sentencing Conference

Judge Ziegler holds a sentencing conference in every case prior to the actual imposition of sentence. Judge Ziegler does not issue tentative find of fact and rulings on Sentencing Guidelines issues except in cases where he contemplates a downward departure.

H. Other General Practices and Procedures

If requested by defense counsel, Judge Ziegler will make recommendations to the Bureau of Prisons regarding the particular federal institution to which a defendant should be sent.

With regard to the turnover of Jencks material, Judge Ziegler encourages that it be done subsequent to jury selection.

If defense counsel, the United States Attorney assigned to prosecute the case, and the probation officer agree to permit the defendant to travel outside the Western District, Judge Ziegler requires the filing of a formal motion for leave to travel.

Judge Ziegler's general policy on how conflicts between defense counsel and the defendant should be handled is that there should be a hearing on the record.

With regard to motions to withdraw as counsel, these motions are generally not granted unless filed very early in the case.

V. **BANKRUPTCY CASES**

N/A

VI. **BANKRUPTCY APPEALS (TO THE DISTRICT COURT)**

A. **Filing/Scheduling**

Judge Ziegler requires briefs to be filed within 30 days by the appellant and within 30 days thereafter by the appellee.

B. **Oral Argument**

Judge Ziegler does not require oral argument by the parties on appeal in bankruptcy matters. Judge Ziegler will entertain requests to permit oral argument, however.

C. **Other General Practices/Procedures**

Judge Ziegler will grant requests to modify the briefing schedule or other requirements set forth in the Federal Rules of Bankruptcy Procedure, if appropriate.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Plaintiffs,)	
)	
vs.)	Civil Action No.
)	
Defendant.)	

CASE MANAGEMENT ORDER

AND NOW, this ____ day of _____, 1995,

IT IS ORDERED that the above captioned civil action be and hereby is placed under Amended Local Rule 16.1 of this Court, applicable to all civil actions filed after January 1, 1994, for pretrial proceedings and all provisions of the Rule will be strictly enforced.

IT IS FURTHER ORDERED that counsel shall confer with their clients prior to all case management, status or pretrial conferences in order to obtain authority for the purpose of participating in settlement negotiations to be conducted by the court. Counsel are encouraged to appear with their principals at all such conferences, or instruct the principals to be available by telephone to facilitate the amicable resolution of all litigation.

IT IS FURTHER ORDERED that compliance with the provisions of Rule 16.1 shall be completed as follows:

- (1) The parties shall move to amend the pleadings or add new parties on or before _____, 19____.
- (2) The parties shall complete discovery on or before _____, 19____. All interrogatories, depositions, requests for admissions and requests for production shall be served within sufficient time to allow responses to be completed and filed prior to the close of discovery.
- (3) The parties shall file motions for summary judgment, if appropriate, on or before _____, 19____.
- (4) plaintiff's pretrial narrative statement shall comply with Rule 16.1.4A, and be filed on or before _____, 19____. Counsel shall specify the material facts including damages to be proved at trial. Proof of material facts not specified may be excluded at trial upon objection or by the court sua sponte.
- (5) Defendant's pretrial narrative statement shall comply with Rule 16.1.4B, and be filed on or before _____, 19____. Counsel shall specify the material facts to be proved at trial. Proof of material facts not specified may be excluded at trial upon objection or by the court sua sponte.
- (6) The parties shall complete the deposition of expert witnesses, if appropriate, on or before _____, 19____.
- (7) The court shall conduct a pretrial conference on _____, 19____, at _____.
- (8) Subsequent to the pretrial conference, counsel for all parties may be ordered by the court to meet at a mutually convenient place to complete a pretrial stipulation to further delineate the legal and factual issues involved.
- (9) The case shall be presumptively called for trial on _____, 19____. Counsel are instructed to review the provisions of Local Rule 16.1.3.

IT IS FURTHER ORDERED that any exhibit which has not been identified by counsel in a pretrial narrative statement, except an exhibit to be used solely for impeachment purposes, shall not be admitted as evidence.

IT IS FURTHER ORDERED that any depositions or any portion thereof to be read into evidence shall be identified at the pretrial conference. Objections to the admissibility of any portion thereof to be read into evidence shall be identified at the pretrial conference. Objections to the admissibility of any portion shall be submitted to the court at the conference. This order does not include video taped qualifications of experts.

IT IS FURTHER ORDERED that the absence of any witness shall not be sufficient cause to delay the trial.

Donald E. Ziegler
Chief Judge

cc: All Counsel.